

February 1, 2010

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: James R. Cromeenes

Date of Filing: December 31, 2009

Case Number: TFA-0345

On December 31, 2009, James R. Cromeenes filed an Appeal from a determination issued to him on December 18, 2009, by the Department of Energy's Oak Ridge Office (Oak Ridge). That determination was issued in response to a request for information that Mr. Cromeenes submitted under the Privacy Act (PA), 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. Mr. Cromeenes asks that Oak Ridge conduct an additional search for documents responsive to his request.

I. Background

Mr. Cromeenes filed a request for information in which he sought copies of his personnel, medical, employment, radiation exposure records and similar files generated during his employment with Allied Chemical (Allied) in Metropolis, Illinois. On December 18, 2009, Oak Ridge issued a determination letter which stated that it conducted a search of “certain legacy records on former Atomic Weapon Employer workers retained at Oak Ridge that pertain to remote sites and companies not located at Oak Ridge.” As a result of this search, Oak Ridge indicated that it located one record, Mr. Cromeenes’ personnel security clearance assurance index card file. This record was released to Mr. Cromeenes. On December 31, 2009, Mr. Cromeenes filed the present Appeal with the Office of Hearings and Appeals (OHA). In his Appeal, Mr. Cromeene challenges the adequacy of the search conducted by Oak Ridge. *See* Appeal Letter. He asks OHA to direct Oak Ridge to conduct a new search for responsive documents.

II. Analysis

Under the Privacy Act, each federal agency must permit an individual access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). The U.S. Department of Justice has issued guidance stating that an individual’s access request for his own record maintained in a system of records should be processed under both the Privacy Act and the FOIA, regardless of the statute(s) cited. U.S. Department of Justice, *Privacy*

Act Overview, May 2004. DOE requires a search for relevant records under the Privacy Act to be conducted with the same rigor that we require for searches under the FOIA. *See, e.g., Carla Mink*, 28 DOE ¶ 80,251 (2002). ^{*/} Accordingly, in analyzing the adequacy of the search conducted by Oak Ridge, we are guided by the principles we have applied in similar cases under the FOIA.

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought material.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The fact that the results of a search do not meet the requester’s expectations does not necessarily mean that the search was inadequate. Instead, in evaluating the adequacy of a search, our inquiry generally focuses on the scope of the search that was performed. *Information Focus On Energy*, 26 DOE ¶ 80,240 (1997).

In reviewing the present Appeal, we contacted officials in Oak Ridge to ascertain the extent of the search that had been performed and to determine whether any other documents responsive to Mr. Cromeenes’ request might reasonably be located. Upon receiving Mr. Cromeenes’ request for information, Oak Ridge determined that the areas most reasonably calculated to contain documents regarding a former subcontractor employee were the Records Holding Area and the Oak Ridge Associated University’s Oak Ridge Institute for Science and Education (ORISE) database. Oak Ridge conducted manual and electronic searches of its Records Holding Area, which contains legacy and personnel security data on employees dating back to 1940. *See* Record of Telephone Conversation between Amy Rothrock, Oak Ridge, and Kimberly Jenkins-Chapman, OHA (January 28, 2010). Oak Ridge stated that Mr. Cromeenes’ former employer, Allied, was a subcontractor and that its Records Holding Area normally possesses only records for contractor employees. *Id.* However, Oak Ridge stated that, as a result of its search, it located one document, a personnel security clearance assurance index card file, which it released to Mr. Cromeenes. Oak Ridge indicated that this document was located because Mr. Cromeenes participated in a health study being conducted by DOE at time of his employment. *Id.* No other documents regarding Mr. Cromeenes were located in the Records Holding Area. Oak Ridge also stated that it conducted a search at the Oak Ridge Associated University’s ORISE database for a work history report on Mr. Cromeenes and located no responsive documents. *Id.* Given the facts presented to us, we find that Oak Ridge conducted an adequate search under both the Privacy Act and the FOIA which was reasonably calculated to discover documents responsive to Mr. Cromeenes’ request. Accordingly,

^{*/} All OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.gov/foial.asp>

Mr. Cromeenes' Appeal should therefore be denied.

It Is Therefore Ordered That:

(1) The Appeal filed by James R. Cromeenes, OHA Case No. TFA-0345, on December 31, 2009, is hereby denied.

(2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552a (g)(1). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: February 1, 2010